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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/418,706	10/15/1999	DENNIS ABTS	499.019US1	9235
21186	7590	04/20/2004	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			BRODA, SAMUEL	
			ART UNIT	PAPER NUMBER
			2123	6
DATE MAILED: 04/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

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Commissioner for Patents

Enclosed is a Notice of Non-Responsive Amendment having a one-month time period for reply.

Art Unit: 2123

NOTICE OF NON-RESPONSIVE AMENDMENT

1. This communication is in response to Applicants' Amendment and Response Under 37 CFR § 1.111 (the "Amendment") mailed on 28 January 2004. Claims 1, 20, 33 were canceled; claims 2, 4-10, 12-14, 16-17, 19, 21, 23-25, 28-32, 34-41, and 43 were amended. Claims 2-19, 21-32, and 34-43 are pending.

2. The Amendment mailed on 28 January 2004 is not fully responsive to the First Office Action on the Merits, Paper No. 3 (the "First Office Action"), because of the following omission(s) or matter(s):

2.1 The First Office Action included a rejection of claims 1-4, 20, 23, 25-29, 32-33, and 36 under 35 U.S.C. 102(b) as being clearly anticipated by Dearth et al, U.S. Patent 5,732,247 issued 24 March 1998. In the originally filed claims, claim 4 was dependent on claims 1 and 2.

Section 6.4 of the First Office Action clearly indicates the basis of the rejection of claim 4, that the "diagnostic kernel" of the prior art "operates on events."

However, Section 7.1 of the First Office Action stated that claim 4 would be allowable if rewritten to overcome the rejections set forth in the Office action and rewritten to include the limitations of claims 1 and 2.

2.2 Because a claim cannot be simultaneously rejected under Section 102(b) and allowable if rewritten in independent form, the First Office Action contains an error. The error here is typographical and appears in Section 7.1, because Section 6.4 clearly indicates the basis for the Section 102(b) rejection of claim 4.

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2.3 In response to the First Office Action, Applicants amended claim 4 to include the limitations of claims 1 and 2. Additionally, Applicants included the following argument at page 12 of the Amendment:

Claims 1-4, 20, 23, 25-29, 32-33, and 36 were rejected under 35 USC § 102(b) as being anticipated by Dearth et al. (U.S. Patent No. 5,732,247). This rejection is believed to be moot in view of the amendments to the claims presented herein.

2.4 The Amendment is considered not fully responsive because it contains no attempt to point out the patentable novelty of amended claim 4. See MPEP § 714.04. Although the Examiner regrets the typographical error appearing in Section 7.1 of the First Office Action, Applicants cannot rely on a typographical error as a substitute for an argument regarding patentable novelty when the prior rejection clearly identifies the prior art feature corresponding to a claim limitation.

Applicant is directed to see 37 CFR 1.111. Since the above-mentioned Amendment appears to be *bona fide*, Applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

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3. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Samuel Broda, whose telephone number is (703) 305-1026. The Examiner can normally be reached on Mondays through Fridays from 8:00 AM – 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kevin Teska, can be reached at (703) 305-9704. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist, whose telephone number is (703) 305-3900.



**SAMUEL BRODA, ESQ.
PRIMARY EXAMINER**